

## REMARKS

This Response is to the non-final Office Action dated May 03, 2007, and the personal interview granted courteously to Applicants' representative on September 6, 2007. Claims 1 to 107 are pending in this application. Claims 1 to 13 and 39 to 98 were previously withdrawn due to a restriction/election requirement. In the Office Action, newly entered Claims 99 to 107 were subject to a Restriction Requirement. Claims 14 to 38 stand rejected. Claims 14, 16, 19, 22, 23, 26, 28, 29, 32, 33, 38, 99, 102 and 105 have been amended herein without adding new matter.

In the Office Action, Claims 14, 16 to 18, 33 to 35, 37, and 38 were rejected under 35 U.S.C. 102(b) as being anticipated by WO 99/29355 to Sternby ("*Sternby*"). Claim 36 was rejected under 35 U.S.C. 103(a) as being obvious over *Sternby*. Claims 15, 19 and 20 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Sternby* in view of U.S. Patent No. 5,932,103 to Kenley et al ("*Kenley I*"). Claims 21 to 32 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Sternby* in view of US 5,591,344 to Kenley et al. ("*Kenley II*") (Applicants assume from pages 7 and 8 of Office Action because no claims recited on page 6). Nonetheless, Applicants believe the Examiner intended to reject claims 21 to 32 over *Sternby* in view *Kenley II* in light of page 7 of the Office Action, which refers to claims 21 to 26 specifically, and page 8 of the Office Action, which refers to claims 27 to 32. Applicants respectfully submit that the claims as presently presented are patentable over the applied art and other art raised in the interview, discussed below.

As discussed in the interview and recorded in the Interview Summary, Applicants respectfully believe that the present claims are distinguished over hemodiafiltration or hemofiltration references for at least the reason that those references do not teach the simultaneous isolating of the dialyzer to provide a volume of fluid to the patient. As seen in the claims, one type of volume provided is a bolus volume, which can be provided to a patient who has had too much blood fluid removed too quickly. Hemodiafiltration or hemofiltration therapies operate in many instances just the opposite to remove blood fluid. Indeed, the claimed volume can be delivered for example in response to the hemodiafiltration or hemofiltration therapy when the therapy removes blood fluid too quickly. As seen in the Interview Summary, it was accordingly agreed that the present claims appear to overcome *Sternby*.

It was also agreed to consider the restricted claims if they too included the above distinctions. Applicants respectfully submit that Claims 99, 102 and 105 as presently presented include the above distinctions, including positively reciting the “control scheme” element via the term “programmed to”.

Applicants respectfully submit that the “programmed to” language added to the independent and dependent claims herein does not itself add any limitation to the claims, and should not serve as a basis for estoppel because the language itself does not disclaim any subject matter with respect to the cited art. The “programmed to” language is instead added so that the language following the phrase is given appropriate patentable weight.

Likewise, the amendments to change “value” to “valve” are for minor informalities and not for any purpose related to patentability.

In the interview, U.S. Patent No. 6,042,784 (“the *'784 Patent*”) at column 6, line 48 and column 7, line 3, was cited as being potentially relevant. U.S. Patent No. 6,916,424 (“the *'424 Patent*”) at Fig. 9 was also cited as being potentially relevant. Applicants address those references in turn.

Column 6, line 48 begins a discussion of running the *'784 Patent* system in a substitution mode. Here, fresh solution is sent to a drip chamber 8 instead of to a source 9. While solution is sent to the extracorporeal circuit (as is the case with hemodiafiltration or hemofiltration), the reference does not teach isolating the filtering device as claimed. Indeed at column 6, line 62, the *'784 Patent* states that a second cycle in the substitution mode is identical to the second cycle of the ultrafiltration mode, which as discussed beginning at column 6, line 24 involves “spent dialysis fluid” (presumably from the dialyzer) being “conveyed ....., so that fresh dialysis fluid .... is diverted and sent to dialysis fluid chamber 4.” (chamber 4 is of dialyzer 1) Clearly, the dialyzer is being used in the substitution mode of the *'784 Patent* and is not isolated.

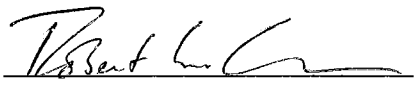
Column 6, line 66 to the end of the specification of the *'784 Patent* discusses performing hemodiafiltration without removing ultrafiltration (“UF”) or excess water from the patient. Here, valves 30 to 33 of UF device 23 are closed, turning UF device 23 off. Valves 30 to 33 do not isolate dialyzer 1. Instead, Applicants believe that dialyzer 1 is being used to clean the patient, while UF device 23 is turned off so that a net balance of fluid is not removed from the patient. Applicants accordingly respectfully submit that the *'784 Patent* does not meet the present claims.

Regarding Fig. 9 and associated disclosure of the '424 *Patent*, column 20, line 17 begins a discussion in which the entire dialysate stream is filtered before being delivered to the dialyzer cartridge 10 at inlet port 15. Thus the dialyzer of the '424 *Patent* does not appear to be isolated and is instead operable during the alternative embodiment of Fig. 9. Applicants accordingly respectfully submit that the '424 *Patent* does not meet the present claims.

For at least the foregoing reasons, Applicants respectfully submit that the above-identified patent application is now in condition for allowance and earnestly solicit reconsideration of same. The Commissioner is hereby authorized to charge Deposit Account 02-1818 for a Two Month Extension of Time and any other fees which are due.

Respectfully submitted,

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